ELLIS EUGENE HARDCASTLE

IBLA 83-549 Decided June 24, 1983

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N 36574.

Affirmed.

1. Applications and Entries: Generally -- Indian Allotments on Public Domain: Lands Subject to

   Where land has been designated for specific disposal pursuant to statutory authority, the land is "otherwise appropriated" within the meaning of sec. 4 of the General Allotment Act, and not available for Indian allotment.

2. Applications and Entries: Generally -- Indian Allotments on Public Domain: Generally

   An application for Indian allotment on the public domain pursuant to sec. 4, General Allotment Act, that is unaccompanied by the certificate of eligibility required by 43 CFR 2531.1(b) is properly rejected.

APPEARANCES: Ellis Eugene Hardcastle, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ellis Eugene Hardcastle appeals from a March 14, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting Indian allotment application N 36574. The application was filed pursuant to the General Allotment Act of February 8, 1887, with BLM on May 12, 1982, for 160 acres in sec. 10, T. 20 S., R. 60 E., Mount Diablo meridian, Clark County, Nevada. In response to questions in the application concerning whether the land was occupied by the applicant and whether there were improvements on the land, appellant responded "no." Appellant checked "yes" in answer to the question, "Do you or the minor child claim a valid bona fide settlement?" The record includes a petition for reclassification but does not disclose that certificate of eligibility was provided by appellant.

BLM rejected the application because:

> The lands requested are located within an area designated under P.L. 96-586 which provides for sale of public land within the area thereby generating revenues to be used for acquisition of environmentally sensitive lands in the Lake Tahoe Basin. Disposal of these lands under the Indian Allotment Act is inconsistent with the intent of P.L. 96-586 since such disposals involve no monetary consideration.

Appellant submitted a statement of reasons almost identical to those presented to the Board by numerous other Indian applicants. See George L. Clay Lee, 70 IBLA 196, 198 (1983). The statement reads in relevant part:

> The classification, rejection and scope and effect of the decision is based upon powers derived from the Statutes, in particular 43 USC 415f, is used as a facade by the Department of Interior to sterilize claims to allotments and in particular is used as a facade to sterilize the provisions of 25 US Code Sections 332, 334 and 415. Indian allotment claims taken on the public domain are taken with the same restrictions and in the same manner as for Indians residing upon reservations (25 US Code 334) and the use Indian allotments can be used for is contained in 25 US Code Section 415. 25 US Code 415 should be read in light of U.S. Constitutional Amendment Five and the doctrine of Choate vs. Trapp 224 U.S. 665, 32 S. Ct. 565, 56 L, Ed. 941.
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> I intend to pursue my claim under 25 years claim No. 345-346. This decision contravenes U.S. Constitutional Amendment Five and the doctrine set forth in Choate vs. Trapp, decided in 1912 which provides rights of Indians under U.S.C.A. Constitutional Amendment Five.

[1] Section 4 of the General Allotment Act of February 8, 1887, as amended, 25 U.S.C. § 334 (1976), authorizes the Secretary of the Interior to issue allotments to Indians where they have made settlements upon public lands "not otherwise appropriated." However, an application for Indian allotment is properly rejected when filed for land not available for settlement and disposition under the General Allotment Act when the application is filed. Lewis Quentin Garver, 67 IBLA 140 (1982). The essential contention raised in the statement of reasons for appellant is that the Department of the Interior cannot use the agriculture land laws, i.e., 43 U.S.C. § 315f (1976), to take away appellant's right to an allotment on the public domain.

First, appellant is incorrect as to the authority which segregates the land at issue from appropriation under the General Allotment Act. P.L. 96-586 was enacted "to provide for the orderly disposal of Federal lands in Clark County, Nevada, and to provide for acquisition of environmentally sensitive lands in the Lake Tahoe Basin." P.L. 96-586, § 1(b), 94 Stat. 3381 (1980). Congress expressly declared: "The Secretary of the Interior * * * is authorized and directed to dispose of [certain designated] lands under the jurisdiction of the Bureau of Land Management in Clark County, Nevada." Id. § 2(a). The statute provides that the revenues generated by the sale of those lands are to be used in the purchase of desired lands in the Lake Tahoe Basin.

All the land described in the application is included in those lands designated under P.L. 96-586 for disposal by sale. Congress has the plenary power to dispose of territory and property belonging to the United States. U.S. Const. art. IV, § 3, cl. 2. The Federal Land Policy and Management Act declares that it is the policy of the United States that "Congress exercise its constitutional authority to withdraw or otherwise designate or declare Federal lands for specific purposes." 43 U.S.C. § 1701(a)(4) (1976). The Department lacks the authority to contravene P.L. 96-586 by disposing of the land in such manner as would not produce funds as contemplated by the statute. Classification for sale of the lands designated pursuant to P.L. 96-586 is beyond review of the Board.

Second, contrary to appellant's belief that he is entitled to an allotment in light of due process afforded Indians by the Fifth Amendment to the U.S. Constitution and the doctrine set forth in Choate v. Trapp, 224 U.S. 665 (1912), the mere filing of an application or receipt of certificate showing an Indian to be eligible to receive an allotment under the General Allotment Act does not create a present right to have the application considered favorably. The Act does not confer a vested right to an allotment. George L. Clay Lee, supra. BLM properly rejected the application because the land was "not otherwise unappropriated."

[2] Furthermore, BLM records reflect that appellant did not file a certificate of eligibility for allotment as required by 43 CFR 2531.1(b). The failure of applicant to provide the certificate of eligibility requires rejection of the application. Phyllis Inez Maston Bartlett, 71 IBLA 1 (1983); Litha Muriel Bryant Smith, 66 IBLA 150 (1982). Moreover, although appellant claims a "settlement," there is nothing in the record to indicate that he physically settled upon the lands prior to segregation for sale under P.L. 96-586.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Douglas E. Henriques
Administrative Judge